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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,113	10/22/2001	Mark W. Paulsen	P02248US2	5983

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DES MOINES, IA 50309-2721

EXAMINER

PETRAVICK, MEREDITH C

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/037,113

Applicant(s)

PAULSEN, MARK W. 

Examiner

Meredith C Petravick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-5, 8-20, 22-25 and 28-38 rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis 5,404,702 in view of Allen 4,932,197 and Buck 4,753,063.

Lewis discloses a rake attachment on a PTO-drive large bale baler (23) including:

- a frame (60) having a front end and a rear end along a longitudinal axis
- a passageway between the front and rear ends for a PTO shaft (Column 4, lines 27-29)
- the front end including a hitch (65, Column 4, lines 27-29) for connection to a tractor
- the rear end including a connection to a large baler (Column 4, lines 24-27)
- arms (Fig. 1) attached to the frame member for supporting rakes
- a mechanism (lift mechanism 10, Columns 5, lines 7-9) operably connected between the frame and rake arm for moving the rakes between a working and stored position

However, in the detailed description Lewis describes attaching powered rakes to the arms instead of non-powered, wheel rakes as claimed. Also, Lewis fails to disclose using an

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automatic actuator instead of a manual mechanism to raise the rakes between a working and stored position. However, Lewis also states, "Since the "base" of the invention is the frame, this portion of the apparatus will be described first. It is also anticipated that the "base" or extension frame will be manufactured and generally sold without windrow rakes. This is because most farmers will have hay rakes that can be attached to the extension frame and they will want to use existing equipment. (Column 4, lines 4-10)" Therefore, even though Lewis does not specifically describe in detail attaching non-powered, wheel rakes to the frame, Lewis teaches that generic hay rakes can be attached to the frame.

Like Lewis, Allen also discloses a frame, with bearings, to which hay rakes are attached. Unlike Lewis, Allen discloses two embodiments. The first with non-powered wheel rakes and the second with powered rakes (650). The powered rakes are powered by a hydraulic motor (690).

Buck discloses non-powered wheel rakes, which are a type of commonly known hay rakes. The wheel rakes (52) are attached to arm (30) by an adjustable mounting (42). The wheel rakes are suspended from a beam (50) so that they move over a range independently from the frame in the working position (Column 5, lines 25-30). The arm (30) is attached to the frame (25) by an actuator (60). The actuator provides automatic moving of the arms between a raised inward stored position (Fig. 5) and a lowered outward working position (Fig. 1).

Given the suggestion in Lewis that any type of hay rakes could be used and the teaching in Allen that wheel rakes could be used alternately with powered rakes, it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the manual mechanism and arms with powered rakes of Lewis with automatic actuator and arms

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with non-powered wheel rakes like those in Buck, since Lewis suggests that previously owned hay rakes could be added to the base frame and a automatic actuator increase operator efficiency.

In regards to claims 10-12, the combination discloses the claimed device except for the angle of the rake arms to the frame being between 20-60 degrees, 35-50 degrees, and 45 degrees. The angle of the rake arms to the frame is a design choice that depends on the width of the material being raked. Note that the specification states, "Also, it is to be understood that the size and operating width of the rake 20 can vary by design.(page 20, lines 6-7)"

3. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Allen and Buck as applied to claim 1 above, and further in view of Kelderman 5,155,986.

The combination discloses the claimed device except for using bolts on the rear connection member in order to secure the baler to the rake attachment.

Kelderman discloses that it is known in the art to use bolts (67) to secure two items together (Column 5, line 28).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to connect the frame to the baler in the combination with bolts as in Kelderman, in order to secure the frame to the baler.

4. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Allen and Buck as applied to claim 18 above, and further in view of Kuehn 4,947,631

The combination discloses the claimed device except for mounting means that allow the rake wheels to adjust the width of the rake means and the height of the rake wheels according to the operating conditions.

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Kuehn discloses that it is known in the art to provide means to adjust the height of the wheel rake (column 3, lines 24-26).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the rake attachment of the combination with the means for adjusting the height of the rake wheel as disclosed in Kuehn, in order to adjust the rake for varying operating conditions.

5. Claim 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Allen and Buck as applied to claim 25 above, and further in view of Trenkamp et al., 5,052,170.

The combination discloses the claimed device except for a shredder being attached to the baler.

Trenkamp et al. discloses that it is known in the art to attach a shredder (10) to the front of a baler in order to process crops in one pass (abstract, lines 16-19).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the baler of the combination with the shredder attachment of Trenkamp et al., in order to further process the crops in a single pass on the field.

6. Claims 1, 4-5, 8-20, 22-25 and 28-38 rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis 5,404,702 in view of Buck 4,753,063 and the combined teaching of Caraway 4,214,428, Lutz 5,987,864, Fell et al. 5,127,217.

Lewis discloses a rake attachment on a PTO-drive large bale baler (23) including:

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- a frame (60) having a front end and a rear end along a longitudinal axis
- a passageway between the front and rear ends for a PTO shaft (Column 4, lines 27-29)
- the front end including a hitch (65, Column 4, lines 27-29) for connection to a tractor
- the rear end including a connection to a large baler (Column 4, lines 24-27)
- arms (Fig. 1) attached to the frame member for supporting rakes
- a mechanism (lift mechanism 10, Columns 5, lines 7-9) operably connected between the frame and rake arm for moving the rakes between a working and stored position

However, in the detailed description Lewis describes attaching powered rakes to the arms instead of non-powered, wheel rakes as claimed. Also, Lewis fails to disclose using an automatic actuator instead of a manual mechanism to raise the rakes between a working and stored position. However, Lewis also states, "Since the "base" of the invention is the frame, this portion of the apparatus will be described first. It is also anticipated that the "base" or extension frame will be manufactured and generally sold without windrow rakes. This is because most farmers will have hay rakes that can be attached to the extension frame and they will want to use existing equipment. (Column 4, lines 4-10)" Therefore, even though Lewis does not specifically describe in detail attaching non-powered, wheel rakes to the frame, Lewis teaches that generic hay rakes can be attached to the frame.

Caraway, Lutz and Fell et al. all describe rakes that are attached to tractors and balers. All are used to move crops into windrows in order to windrow and bale in one pass. However,

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Caraway and Lutz used non-powered wheel rakes while Fell et al. uses powered rakes. These references

Buck discloses non-powered wheel rakes, which are a type of commonly known hay rakes. The wheel rakes (52) are attached to arm (30) by an adjustable mounting (42). The wheel rakes are suspended from a beam (50) so that they move over a range independently from the frame in the working position (Column 5, lines 25-30). The arm (30) is attached to the frame (25) by an actuator (60). The actuator provides automatic moving of the arms between a raised inward stored position (Fig. 5) and a lowered outward working position (Fig. 1).

Given the suggestion in Lewis that any type of hay rakes could be used and the teaching of Caraway, Lutz and Fell et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the manual mechanism and arms with powered rakes of Lewis with automatic actuator and arms with non-powered wheel rakes like those in Buck, since Lewis suggests that previously owned hay rakes could be added to the base frame and a automatic actuator increase operator efficiency.

In regards to claims 10-12, the combination discloses the claimed device except for the angle of the rake arms to the frame being between 20-60 degrees, 35-50 degrees, and 45 degrees. The angle of the rake arms to the frame is a design choice that depends on the width of the material being raked. Note that the specification states, "Also, it is to be understood that the size and operating width of the rake 20 can vary by design.(page 20, lines 6-7)"

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7. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Caraway, Lutz, Fell et al. and Buck as applied to claim 1 above, and further in view of Kelderman 5,155,986.

The combination discloses the claimed device except for using bolts on the rear connection member in order to secure the baler to the rake attachment.

Kelderman discloses that it is known in the art to use bolts (67) to secure two items together (Column 5, line 28).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to connect the frame to the baler in the combination with bolts as in Kelderman, in order to secure the frame to the baler.

8. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Caraway, Lutz, Fell et al. and Buck as applied to claim 18 above, and further in view of Kuehn 4,947,631

The combination discloses the claimed device except for mounting means that allow the rake wheels to adjust the width of the rake means and the height of the rake wheels according to the operating conditions.

Kuehn discloses that it is know in the art to provide means to adjust the height of the wheel rake (column 3, lines 24-26).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the rake attachment of the combination with the means for

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adjusting the height of the rake wheel as discloses in Kuehn, in order to adjust the rake for varying operating conditions.

9. Claim 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Caraway, Lutz, Fell et al. and Buck as applied to claim 25 above, and further in view of Trenkamp et al., 5,052,170.

The combination discloses the claimed device except for a shredder being attached to the baler.

Trenkamp et al. discloses that it is known in the art to attach a shredder (10) to the front of a baler in order to process crops in one pass (abstract, lines 16-19).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the baler of the combination with the shredder attachment of Trenkamp et al., in order to further process the crops in a single pass on the field.

Response to Arguments

10. Applicant's arguments filed 8/02/2004 and 8/18/2004 have been fully considered but they are not persuasive.

Applicant argues that the combination of Lewis, Allen and Buck is not obvious since 1) Lewis's preferred embodiment only describes power rakes, 2) Lewis cannot bodily incorporate the device of Allen and 3) applicant has different motivations for combining.

Column 4, line 4-10 of Lewis refers to "hay rakes" and not power rakes. Because Lewis, discloses a preferred embodiment using power rakes does not detract from the plain meaning of

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the words "hay rakes." This passages gives suggestion to further modifications of the base extension.

In response to applicant's argument that Lewis cannot bodily incorporate the device of Allen, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

In response to applicant's argument that applicant has different motivations for combining, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

The examiner has considered the declarations of Chris Herbold and Mark Boles submitted by applicant. However, the examiner does not consider them persuasive enough to overcome the teaching in Lewis.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO


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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Meredith C Petravick whose telephone number is 703-305-0047. The examiner can normally be reached on M-T 8:00 a.m.- 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Meredith C Petravick
Patent Examiner
Art Unit 3671

November 14, 2004